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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,463	02/04/2004	Julius I. Pershwitz	115018	1350
25944	7590	01/11/2006	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			MCCARRY JR, ROBERT J	
			ART UNIT	PAPER NUMBER
			3617	
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill (US 4,248,318).

O'Neill discloses a suspension assembly for a railcar comprised of a pair of sideframes 12 having an opening 18 for accepting the ends of a bolster 20 and inner and outer springs 24. The inner and outer springs 24 act to absorb the load of the rail car and control the shock absorption for the railcar. At the sides of the sideframe 12 and bolster 20 is a set of friction shoe wedges mounted above the springs 24 in the side of the sideframe for supporting the bolster. A reserve capacity for the assembly is determined by the amount of travel that is left in the springs from height at full load conditions to total deflection of a solid spring state.

O'Neill discloses the structure for the suspension assembly as disclosed above. However, O'Neill does not disclose the reserve capacity of the assembly to be less than 1.5. The Examiner has interpreted that since the reserve capacity as stated above is determined in a similar manner to that of the present application, it would have been obvious to one of ordinary skill in the art to understand that the reserve capacity would

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be under 1.5 depending on the load of the rail car on the springs and the speed and movement of the railcar.

Regarding claim 6 drawn to the weight capacity of the railway truck. It would be an obvious design choice to one of ordinary skill in the art to make the weight capacity of the truck 286,000 pounds based on the materials used to construct the truck and the application where the railcar would be used.

Response to Arguments

Applicant's arguments filed 10/18/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that the prior art does not recognize the benefits associated with a reserve capacity less than 1.5. The arguments state that the Association of American Railroads set a minimum reserve capacity. As is well known a claim cannot encompass an industry standard. Standards are regularly changed and therefore a claim would be indefinite if it were to rely on an industry standard. Applicant

argues that the reserve capacity of the present invention is less than the minimum allowed by the AAR standard. This argument is unclear as to how the invention is able to work based on it being below the standard operating parameters.

In response to applicant's argument that unexpected results of a decrease in vertical acceleration should be entered as evidence to the case and not included in the arguments.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (571) 272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert J. McCarry, Jr.
Examiner
Art Unit 3617

RJM
January 6, 2006


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